

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHELLE WILSON,

Plaintiff,

-against-

NORTHWESTERN MUTUAL INSURANCE
COMPANY,

Defendant.
-----X

Civil Action No. 07/03811

**AFFIDAVIT OF CYLVIA
PRINCE IN SUPPORT OF
NORTHWESTERN MUTUAL
LIFE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Cylvia Prince, being duly sworn, deposes and says:

1. I am employed by The Northwestern Mutual Life Insurance Company ("Northwestern Mutual") as a Research Specialist in its Research Division. In my capacity as a Research Specialist, I am familiar with the life insurance policies issued by Northwestern Mutual to its policyholders and the Insurance Service Accounts ("ISA") maintained by Northwestern Mutual.

2. I make this Affidavit in support of Northwestern Mutual's motion for summary judgment and I base this Affidavit on the business records regularly maintained by Northwestern Mutual in the course of its business.

3. Attached hereto as Exhibit "J" is a replica of Whole Life Policy No. 16, 852,083 (the "Whole Life Policy") issued by Northwestern Mutual insuring the life of Kenneth Wilson. The Whole Life Policy was issued on May 29, 2004 with a face amount of \$150,000 and the owner of the Whole Life Policy was Kenneth Wilson. The application for the Whole Life Policy indicates that the Premium Payer for the Policy would be "ISA".

4. The Whole Life Policy provides that premiums may be paid every 3, 6 or 12 months or on any other frequency approved by Northwestern Mutual. The provisions of the Whole Life Policy which so state are set forth at pg. 8 of the Policy as follows:

Frequency. Premiums may be paid every 3, 6 or 12 months at the published rates of the Company. A change in premium frequency will take effect when the Company accepts a premium on a new frequency. Premiums may be paid on any other frequency approved by the Company

5. The Whole Life Policy provides for a grace period to pay a premium that is not paid on its due date and further provides that the policy will terminate if the premium is not paid within the grace period. The provisions of the Whole Life Policy which so state are set forth at pg. 8 of the Whole Life Policy as follows:

Grace Period. A grace period of 31 days will be allowed to pay a premium that is not paid on its due date. The Policy will be in full force during this period. If the Insured dies during the grace period, any overdue premium will be paid from the proceeds of the policy.

If the premium is not paid within the grace period, the policy will terminate as of the due date unless it continues as extended term or paid-up insurance under Sections 7.2 or 7.3.

6. Attached hereto as Exhibit "K" is a replica of Term Life Policy No. 16,852,105 (the "Term Policy") issued by Northwestern Mutual insuring the life of Kenneth Wilson. The Term Policy was also issued on May 29, 2004 and had a face amount of \$350,000. Kenneth Wilson was also the owner of the Term Policy. The application for the Term Policy indicates that the Premium Payer for the Policy would be "ISA".

7. The Term Policy provides that premiums may be paid every 3, 6 or 12 months or on any other frequency approved by Northwestern Mutual. The provisions of the Term Policy which so state are set forth at pg. 6 of the Policy as follows:

3.3 FREQUENCY

Premiums may be paid every 3, 6 or 12 months at the published rates of the Company. A change in premium frequency will take effect when the Company accepts a premium on a new frequency. Premiums may be paid on any other frequency approved by the Company.

8. The Term Policy provides for a grace period to pay a premium that is not paid on its due date and further provides that the policy will terminate if the premium is not paid within the grace period. The provisions of the Term Policy which so state are set forth at pg. 6 of the Term Policy as follows:

3.4 GRACE PERIOD

A grace period of 31 days will be allowed to pay a premium that is not paid on its due date. The policy will be in full force during this period. If the Insured dies during the grace period, any overdue premium will be paid from the proceeds of the policy.

If the premium is not paid within the grace period, the policy will terminate as of the due date.

9. The ISA is an account funded by a policyholder by which premiums are paid for Northwestern Mutual policies. In this case, Kenneth Wilson applied to set up an ISA to pay the premiums on the Whole Life Policy and the Term Policy. Attached hereto as Exhibit "L" is the ISA PLUS Request dated May 22, 2004 signed by Mr. Wilson to set up his ISA. Northwestern Mutual accepted Mr. Wilson's request and set up ISA 96-957-01 (the "Wilson ISA").

10. According to Exhibit "L", the Wilson ISA was to be funded by the electronic transfer of funds ("EFT") from Mr. Wilson's bank account. An initial payment of \$224.85 was to be made by electronic funds transfer from Mr. Wilson's bank account to the Wilson ISA and Mr. Wilson chose to have funds transferred to the ISA monthly and to pay premiums from the ISA on a monthly basis for the Whole Life Policy and the Term Policy (sometimes referred to

collectively as the "Policies"). In accordance with the terms of the Policies, Northwestern Mutual approved the payment of premiums for the Policies on a monthly frequency.

11. Attached hereto as Exhibit "M" is the financial history for the Wilson ISA. This financial history is maintained by Northwestern Mutual in the regular course of its business, and it is part of Northwestern Mutual's regular business to maintain these records. I reviewed the Wilson ISA financial history and created an Account History for the Wilson ISA from these records.

12. Attached hereto as Exhibit "N" is the Account History I created for the Wilson ISA. The Account History shows the electronic fund transfers were made to the Wilson ISA on June 3, June 22 and July 22, 2004, each in the amount of \$224.85. On July 28, 2004, monthly premium payments for the Whole Life Policy, each in the amount of \$203.92, were made for the periods ending June 29, July 29 and August 29, 2004. On July 28, 2004, monthly premium payments were made for the Term Policy, each in the amount of \$20.93, for the periods ending June 29, July 29 and August 29, 2004.

13. Exhibit "N" shows that on August 23, 2004, an EFT payment was made to the Wilson ISA in the amount of \$224.85 and that the premiums for the Policies for the period ending September 29, 2004 were paid from the Wilson ISA to Northwestern Mutual on that same date. However, on August 27, 2004, the EFT was reversed because Mr. Wilson's bank did not honor the draft. Consequently, the premium payments made for the Policies for the period ending September 29, 2004 were reversed and on September 24, 2004, the Wilson ISA was closed.

14. Exhibit "N" shows that on October 29, 2004, the Wilson ISA was reopened with an EFT payment of \$674.55 being made. On November 1, 2004, monthly premium payments

for the Policies for the periods ending September 29, October 29 and November 29, 2004 were made. Therefore, as of November 1, 2004, the Policies were paid to November 29, 2004.

15. Exhibit "N" shows that on November 22, 2004, an EFT payment was made to the Wilson ISA in the amount of \$224.85 and that the premiums for the Policies due for the period ending December 29, 2004 were paid. However, on November 29, 2004, the EFT was reversed because Mr. Wilson's bank did not honor the draft. Consequently, the premium payments for the Policies for the period ending December 29, 2004 were reversed and on January 11, 2005, the Wilson ISA was again closed. As of January 11, 2005, the Policies were still only paid to November 29, 2004.

16. Exhibit "N" shows that on January 14, 2005, the Wilson ISA was reopened with an EFT payment of \$449.70 being made. On January 17, 2005, payments for premiums for the Policies for the periods ending December 29, 2004 and January 29, 2005 were made. However, on January 21, 2005, the EFT was reversed because Mr. Wilson's bank did not honor the draft. Consequently, the premium payments made for the Policies for the period ending December 29, 2004 were reversed. As of January 21, 2005, the Policies were still only paid to November 29, 2004.

17. Exhibit "N" shows that on February 2, 2005, an EFT payment of \$449.70 was received. This payment allowed the premiums to be paid for the Policies for the periods ending December 28, 2004 and January 29, 2005.

18. Exhibit "N" shows that on March 15, 2005, the Wilson ISA was closed since it had no funds. At this point in time, the Policies were paid to January 29, 2005. The Wilson ISA was reopened on April 5, 2005 with an EFT payment of \$224.85.

19. Exhibit "N" shows that on April 6, 2005, premium payments were made for the Policies for the periods ending February 28, March 29 and April 29, 2005, which resulted in a negative balance in the Wilson ISA of \$449.69.

20. Exhibit "N" shows that on April 7, 2005, the payments for the premiums for the Policies due on February 28 and March 29, 2005 were reversed, which eliminated the negative balance in the Wilson ISA. At this point in time, the Policies were paid to February 28, 2005.

21. Exhibit "N" shows that on April 12, 2005, both Policies were removed from the Wilson ISA and that it was closed yet again.

22. Exhibit "N" shows that on April 28, 2005, the Wilson ISA was reopened, but that only the Term Policy was added to the Account. The premium for the Whole Life Policy was only paid to February 28, 2005 and it therefore terminated on that date in accordance with the terms of the Policy.

23. Exhibit "N" shows that the Wilson ISA received an EFT payment of \$215.60 on April 29, 2005, and that the monthly premium for the Term Policy for the 10 monthly periods ending March 29, April 29, May 29, June 29, July 29, August 29, September 29, October 29, November 29 and December 29, 2005 were paid, resulting in an account balance of \$0.00 as of April 29, 2005.

24. Exhibit "N" shows that there was a premium adjustment of \$35.00 made on May 9, 2005, resulting in a negative balance in the Wilson ISA of \$35.00 as of that date.

25. Exhibit "N" shows that on May 23, 2005, the seven premium payments for the Term Policy due May 29, June 29, July 29, August 29, September 29, October 29 and November 29, 2005 were reversed, resulting in a final account balance of \$154.07 in the Wilson ISA. The balance of \$154.07 was refunded to Kenneth Wilson by check dated May 31, 2005.

26. The premium payments applied on April 28, 2005 were in the amounts of \$20.93 for the periods ending March 29, April 29 and May 29, 2005 and in the amounts of \$21.83 for the periods ending June 29, July 29, August 29, September 29, October 29, November 29 and December 29, 2005. When the seven payments were reversed on May 23, 2005, each amount reversed was in the amount of \$27.01, which was more than each payment made.

27. The reason for the difference in the amounts paid and reversed is that the premium for the Term Policy increased in 2005 and the ISA took note of this increase when it reversed the payments. The annual premium for the Term Policy in 2004 was \$242.50, while the annual premium for the Policy in 2005 would have been \$313.00. When the premium payments were reversed, the ISA assumed that the increased premium had been charged. Therefore, more monies were refunded to Kenneth Wilson than were actually paid for the premium on the Term Policy.

28. Attached hereto as Exhibit "O" is a copy of Northwestern Mutual's cancelled check dated May 31, 2005 in the amount of \$154.07 issued to the order of Kenneth Wilson. Northwestern Mutual has a copy of this check as it was deposited and returned to Northwestern Mutual's bank for cancellation.

29. On May 31, 2005, Northwestern Mutual also issued a check to Mr. Wilson in the amount of \$81.03, representing a refund of three monthly payments for premium due February 28, March 29 and April 29, 2005, which had been paid for the Term Policy. As these funds were refunded on May 31, 2005, the Term Policy terminated as of February 28, 2005.

30. Northwestern Mutual does not have a copy of its check for \$81.03 also issued on May 31, 2005 as it was never deposited and returned for cancellation.

Dated: January 25, 2008
Milwaukee, Wisconsin


Cylvia Prince

Sworn to before me this 25 day
of January, 2008


Notary Public

Caryle Babcock
Notary Public
State of Wisconsin

AFFIDAVIT OF SERVICE


STATE OF NEW YORK)
) SS. :
COUNTY OF NASSAU)

I, Lisa Sullo being sworn, say:

I am not a party to the action, am over 18 years of age and reside in West Babylon, New York.

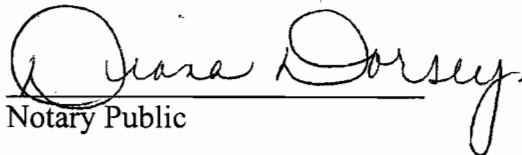
On January 31, 2008, I served the within **Affidavit of Cylvia Prince in Support of Northwestern Mutual Life Insurance Company's Motion for Summary Judgment** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Douglas R. Dollinger & Associates
40 Matthews Street, Suite 101
Village of Goshen
Goshen, New York 10924



Lisa Sullo

Sworn to before me this
31th day of January, 2008



Notary Public

DIANA DORSEY
Notary Public, State of New York
No. 01DO6067959
Qualified in Nassau County
Commission Expires December 24, 20 09